CRIMINAL APPEAL.

P. C. Au Yong for the appellant.

F. G. Cooke (D. P. P.) for the respondent.

The judgment of the Court of Appeal was delivered by :—

Spenser Wilkinson J. : — In this case the appellant was charged with possession of a .38 revolver, an offence punishable under Regulation 4(1) (a) of the Emergency Regulations, 1948. Both the Assessors expressed the opinion that the appellant was guilty; the learned trial Judge agreed with these opinions and the appellant was accordingly convicted and sentenced to death. At the conclusion of the hearing we dismissed the appeal and announced that we would give our reasons later which we now proceed to do.

The first comment we desire to make is in regard to the charge. The story of the prosecution witnesses, if true, clearly disclosed a case of carrying arms. The legislature has made it equally an offence to carry, to possess or to have control of arms or ammunition; but in view of the fact that all such cases have to be tried by a Judge with the aid of Assessors we are of opinion that it is very desirable, where the offence is clearly carrying, to charge it as such. Both tht evidence required to prove the offence of carrying and the law relating thereto are simpler than in a case of possession and, to charge a person who has carried arms with possession of them, unnecessarily increase the difficulties of the Assessors and the trial Judge in trying a capital charge.

The next point to which we must draw attention is the remark in the summing up of the learned trial Judge to the effect that section 94 of the Penal Code does not apply to an offence under the Emergency Regulations. This is not correct. Section 40 of the Penal Code lays down that in Chapter IV of that Code, which is the chapter relating to General Exceptions and includes section 94, the word "offence" denotes a thing punishable under the Code or under any other law for the time being in force. So that all the General Exceptions apply to offences under the Emergency Regulations. The learned trial Judge did, however, go on to direct the Assessors upon the question of duress as fully as he could have done had he considered section 94 applicable. We were of opinion therefore that this slip in the summing up in no way prejudiced the appellant.

Finally, there is one respect in which the learned trial Judge's summing up was rather too favourable to the appellant. He stated that the prosecution must prove that the firearm, which was in the possession of the accused, was unlicensed and that he had no licence to possess it. We think this puts the matter too strongly. The prosecution should give *prima facie* evidence that a firearm in the possession of an accused is unlicensed; but if the accused in fact had a licence this is a matter as much within his own knowledge as the possession of a railway ticket would be in the circumstances described in Illustration (b) to section 106 of the Evidence Enactment and it is therefore for the accused to show, if this be the fact, that he is licensed. (See *Rex v. Oliver*[1]).

Although we have thought it right to express our views upon the above three matters, it is clear in our view that none of them detracts in any way from the propriety of the conviction in this case. There was ample evidence upon which the Assessors and the learned trial Judge could find the appellant guilty and there was no material misdirection. In any event we were satisfied that the Assessors must have arrived at the same conclusion. The appeal was therefore dismissed.

Appeal dismissed.

PUBLIC PROSECUTOR v. NG TICK CHUAN

[A. Cr. J. (Spenser Wilkinson J.) August 5, 1947]

[K. L. — Criminal Miscellaneous Application No. 16 of 1947]

Criminal Procedure Code (Cap. 6), ss. 294, 295 and 426 — Binding over under s. 294 — Whether punishment.

Binding over under section 294 of the Criminal Procedure Code (Cap. 6) is not a punishment because this section provides that the Court may release an accused person upon a bond "instead of sentencing him at once to any punishment." Moreover, one of the conditions in the bond is to appear and receive judgment if and when called upon and it would be on this occasion that any punishment would be awarded.

[**Editorial Note**: Since this decision section 426 of the Criminal Procedure Code (Cap. 6) has been amended by Ordnance No. 8 of 1954 by deleting the words "in addition to any other punishment" and therefore the case is no more law as far as it concerns the present section 426 of the Criminal Procedure Code.]

REVISION.

Spenser Wilkinson J. : — Having considered the record in this case on revision I have come to the conclusion that that part of the learned District Judge's order which purports to have been made under section 426 of the Criminal Procedure Code is erroneous in two respects. In the first place, I can find no provision in that section for an order for payment into Court. The section provides for payment by an accused to any person injured by the offence, and sub-section (ii) of the same section lays down that the Court shall specify the person to whom compensation is to be made. Secondly the section appears to contemplate

that an order for costs or compensation is to be made in addition to any other punishment and the same considerations seem to me to apply to this section as to section 295. Binding over under section 294 is not in my opinion a punishment because this section provides that the Court may release an accused person upon a bond "instead of sentencing him at once to any punishment." Moreover, one of the conditions in the bond is to appear and receive judgment if and when called upon and it would be on this occasion that any punishment would be awarded.

I am therefore of opinion that under section 426 no order can be made for payment of either costs or compensation by the accused unless some punishment has been awarded.

For the above reasons, I must vary the order of the learned District Judge by deleting therefrom the orders for payment into Court at $10 per month the sum of $200 to Song Seng Phuan and the order for the payment of costs. The $15 costs if paid must be returned to the accused, and if any money has been paid into Court and is still in Court in respect of the compensation this must also be returned to the accused. If any compensation has in fact been paid to Song Seng Phuan himself he will be entitled to retain it as I have no power to order him to return any money to the accused.

Order for Payment of Compensation and Costs set aside.

CHELLAPAH v. GOH KIM LIEW & ORS.

[A. C. J. (Pretheroe Ag. C.J.) March 5, 1948]

[K. L. — Civil Appeal (Labour) No. 20 of 1947]

Labour Code (Cap. 154) s. 93 — Adjudication by Assistant Commissioner of Labour — Allegation that Assistant Commissioner was biased.

This was an appeal from the adjudication of the Assistant Commissioner of Labour, Klang between the appellant and his employees. One of the grounds of appeal was that the whole adjudication should be set aside as there was a real likelihood that the Assistant Commissioner who conducted the enquiry would be biassed. It was alleged that the Assistant Commissioner had taken part in endeavouring to settle a dispute between the appellant and some of his employees, who formed a large majority of the respondents.

Held: as there was no evidence that the Assistant Commissioner had identified himself solely or even chiefly with either side, he was not debarred from conducting the adjudication because of the likelihood of bias or for any other reason.

Cases referred to:—

(1) *The King v. The Justices of Sunderland* (1901) 2 K.B. 357.

(2) *Chhin Sin Choy v. Chin Kee & Ors.* 4 F.M.S.L.R. 3.

K. K. Benjamin for the appellants.

R. Ramani for the respondents.

Pretheroe Ag. C.J.: — This is an appeal from an adjudication under section 93 of the Labour Code (Cap. 154) by the Assistant Commissioner of Labour, Klang, between an employer (the appellant) and about 590 of his employees (the respondents). There were several grounds of appeal, and the relevant facts will be stated as each ground of appeal is considered.

The first ground of appeal was that the whole adjudication should be set aside as there was a real likelihood that the Assistant Commissioner of Labour who conducted the enquiry (hereinafter referred to as "the Assistant Commissioner") would be biased. In support of this submission Mr. Benjamin, on behalf of the appellant, drew attention to the following activities of the Assistant Commissioner. In the early months of 1947 there had been a dispute concerning terms of service between the appellant and his Indian employees (who form a large majority of the present respondents), and the Assistant Commissioner took a very active part in endeavouring to settle that dispute. In fact he performed the duties of what is now known in modern Trade Union practice, I believe, of a conciliator. The points in dispute were eventually settled, and the Assistant Comissioner then assisted in preparing a draft agreement embodying the agreed decisions, which was signed by the interested parties on the 22nd of February, 1947. Finally, it was contended that the appellant desired to call the Assistant Commissioner as a witness at the very adjudication over which he presided. The Assistant Commissioner was informed of this fact at the start of the adjudiction, and he gave his reasons (at page 205 of the record) for declining to give evidence. The appellant stated that he desired the Assistant Commissioner to give evidence on three subjects which he alleged would disclose breaches of the February agreement by the labourers. On two of the subjects the Assistant Commissioner pointed out that he could give no direct evidence whatever: his knowledge thereof was derived solely from what he had been told by the parties. Regarding the third subject he agreed that he could have given direct evidence, but on that point his Labour Inspector was an equally competent witness and was available to give evidence.

In support of the submission that the Assistant Commissioner's previous activities, which I have just described, were such as to cause a real likelihood that he would be biased, Mr. Benjamin cited *The King v. The Justices of Sunderland*[1] and *Chhin Sin Choy v. Chin Kee & Ors.*[2]. Before commenting on these cases I should interpolate here that Mr. Benjamin